

EIP



Should the language of proceedings be changed: balancing the interests of the parties

Plant-e Knowledge B.V. & Plant-e B.V. v Arkyne Technologies S.L.

Order of 18 October 2023 (ORD 581189/2023)

The claimants, two Netherlands companies, (“Plant-e”) launched an infringement action on 12 July 2023 against a Spanish company (“Arkyne”) in The Hague Local Division with Dutch as the language of proceedings.

On 3 August 2023, at the request of Plant-e, the court made a procedural order (ORD 551178/2023) that English language documents in the case need not be translated into Dutch. This was without submissions from the defendant but the court took the view that Arkyne would not have any interest in receiving translations into Dutch, presumably because it was a Spanish company.

Subsequently, by application dated 21 September 2023, Arkyne asked to change the language of proceedings to English, the language in which the patent was granted, referring to Rule 322 and Rule 323 RoP. Arkyne also requested that Plant-e pay the costs of the application.

Points in Issue

Rule 323.1 RoP states that:

“If a party wishes to use the language in which the patent was granted as language of the proceedings, in accordance with Article 49(5) of the Agreement, the party shall include

such Application in the Statement of Claim, in the case of a claimant, or in the Statement of Defence, in the case of a defendant.”

Arkyne argued that a reasonable interpretation of the Preamble, Rules and Articles does not require that such an application is brought by the Statement of Defence but could be made earlier. Arkyne is a small Spanish company still in the start-up phase and translation costs would represent a disproportionate and unnecessary financial burden. Plant-e is an international company that uses English as a working language. Previous inter partes correspondence was in English.

Plant-e did not consent to the change. They pointed out that the claimant has the option to choose the language and for them as Dutch parties and representatives in front of The Hague Local Division Dutch was a natural choice. Translation costs for Arkyne could be limited by machine translations and interpretation of oral proceedings should not be needed because the judges and three out of four of Arkyne’s representatives speak Dutch.

Decision

By article 49(5) UPCA the President of the CFI may decide that the language in which the patent was granted shall be used as the language of proceedings. Arkyne’s request was made on the basis of both Rule 322 and Rule 323 for the event that Plant-e did not consent. Rule 322 provides that the judge-rapporteur may “of his own motion or on a request by a party” propose the language be changed “at any time during the written, and the interim procedure”. Rule 323 should not be interpreted as precluding that an application to change the language could be made by the defendant before filing the Statement of Defence. To interpret otherwise would be counter to the aims of the Preamble including point 4: “Flexibility shall be ensured by applying all procedural rules in a flexible and balanced manner with the required level of discretion for the judges to organize the proceedings in the most efficient and cost effective manner”. Rather Rule 323.1 should be understood as a time limit for the defendant to request a change of language.

On the merits, Plant-e’s position was merely that the inconvenience to Arkyne of Dutch was not disproportionate nor too costly. Both parties have good command of English. The pre-action correspondence was conducted in English. Plant-e would not be adversely affected by the use of English. On the other hand the “language initially chosen is significantly detrimental to [Arkyne]” and being sued “in a language they do not master is an important inconvenience” for Arkyne even if assisted by Dutch representatives. Preparatory work would be conducted in English and then have to be translated into Dutch for submissions.

The court ordered the language of proceedings be changed to English and that costs are to be dealt with in the main proceedings.

Comment

The court took a pragmatic view to interpretation of Rule 323.1, noting that making a defendant wait until filing its Statement of Defence to request a change was likely to slow proceedings and reduce efficiency. In deciding whether to make the change the court balanced the interests of the parties, ultimately coming down on the side of changing away from a language the defendant did not understand